



U.S. Department
of Transportation
**Federal Highway
Administration**

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May 15, 2020

Kyle Schneweis, P.E.
Director
Nebraska Department of Transportation
Lincoln, NE

Dear Mr. Schneweis:

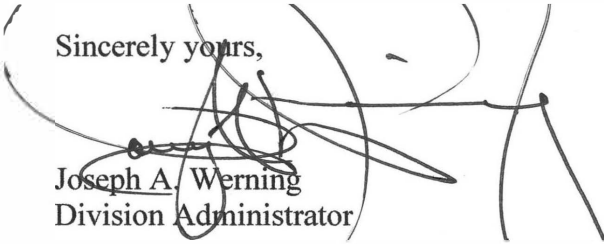
Nebraska Department of Transportation SEP-16 Request for Experimental Authority to Approve Statewide Work Program Amendments

This letter is in response to your January 7 letter of interest to participate in Federal Highway Administration's (FHWA) Special Experimental Project (SEP-16) through a delegation of FHWA's responsibilities relating to approval of amendments to the Statewide Work Program. In accordance with the process described in the FHWA's September 20, 2018, *Federal Register* Notice establishing SEP-16 (83 FR 47674), we have reviewed your proposal to determine whether it is within the scope of 23 U.S.C. 502(b) and appropriate for experimentation under SEP-16. We concluded that delegation of responsibilities relating approval of Statewide Work Program amendments is not appropriate under the SEP-16 program. Key reasons for this decision include:

1. The use of Title 23 planning and research funds is addressed in 23 CFR part 420. Section 420.115(a) makes approvals of Statewide Work Plan amendments subject to 2 CFR part 200 (the successor regulations to 49 CFR Parts 18 and 19). Revision of Federal award budget and program plans is governed by 2 CFR 200.308. Implementation of your agency's proposal would require experimental delegation of the Federal decisions under those regulations. However, SEP-16 can be used only to test deviations from Title 23, United States Code, statutory, regulatory, or policy provisions (83 FR 47674, 47675 (September 20, 2018)).
2. Approval of amendments to Statewide Work Plans are inherently eligibility decisions. SEP-16 excludes experimentation with the delegation of Federal decisions on eligibility, obligation, reimbursement, authorization, and compliance (*Id.* at 47675).

We appreciate your interest in SEP-16, and we look forward to working with you and your staff on other concepts that may be appropriate for SEP-16 experimentation. If you have any questions, please contact me at (402)742-8461 or at joseph.werning@dot.gov

Sincerely yours,


Joseph A. Werning
Division Administrator

cc: Michael J. Graf, FHWA
Janet L. Myers, FHWA